

Shahverdy v. Mukasey, No. 05-72721
THOMAS, Circuit Judge, dissenting:

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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully dissent from the majority's denial of the petition for review.

The IJ based his denial of Ms. Shahverdy's asylum application on an adverse credibility finding. On close examination, each of the IJ's reasons for the adverse credibility finding either lacks support of substantial evidence, reflects a misunderstanding of the record, or does not go to the heart of Ms. Shahverdy's application.

For example, the IJ based his adverse credibility finding in part on his conclusion that Ms. Shahverdy provided inconsistent testimony about the gender of someone who assisted her in her asylum application. The IJ claims that Shahverdy testified that she was assisted by an Iranian man, but in cross-examination stated that the application was prepared by Fatima Brown. The IJ then concludes, "The Court believes this is a female name, not a male name." What Ms. Shahverdy actually said on direct examination is that she was assisted by an Iranian nun, not an Iranian man.¹

Similarly, the IJ's finding that Shaverdy testified in a contradictory fashion about her arrest in Iran apparently is based on the following portion of the

¹ Ironically, in affirming the IJ, the BIA referred to Ms. Shahverdy using both male and female pronouns, thus committing the same error that the IJ erroneously found to be so egregious.

transcript:

Q. Okay. Were you ever arrested in Iran?

A. (Indiscernible) during the reign of (indiscernible).

Based on this exchange, the IJ found that she had testified on direct examination “that she had never been arrested in Iran,” which contradicted her later testimony during cross-examination that she was arrested during the Khomeini regime. Although the transcript is obviously incomplete, it is difficult to conclude that “(Indiscernible) during the reign of (indiscernible)” means “no” or is inconsistent with later testimony that she was arrested “during the regime of Khomeini.”

These are but two examples, but are representative of my concerns about the IJ’s analysis. To be sure, there are inconsistencies in the petitioner’s asylum applications and her testimony. However, none of the inconsistencies are major and none go to the heart of her claim. The IJ’s adverse credibility finding is based on conclusions that either are not supported by the record or do not constitute legally valid reasons for rejecting credibility under our case law. Therefore, I would grant the petition and remand to the BIA for a determination on the merits as to whether she is eligible for asylum.